

Introduced by Senators Poochigian, Aanestad, Ackerman, Battin, Denham, Hollingsworth, Knight, Margett, McPherson, Morrow, and Oller

February 21, 2003

An act to amend Section 17276 of, to repeal Section 17276.3 of, and to repeal and add Section 18662 of, the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1012, as introduced, Poochigian. Income and bank and corporation taxes: net operating losses: real estate withholding requirements.

The Personal Income Tax Law and the Bank and Corporation Tax Law allow various deductions in computing the income that is subject to the taxes imposed by those laws. Existing law generally allows individual and corporate taxpayers to utilize net operating loss carryovers for purposes of offsetting their individual and corporate tax liabilities but, for the 2002 and 2003 taxable years, disallows these deductions for specified net operating loss carryovers. Existing law extends the carryover period for the net operating losses, thus allowing the taxpayers to have the same number of years to utilize the deduction as they would have if the change had not been enacted.

This bill would repeal these disallowance provisions.

Existing law allows a net operating loss carryforward deduction in an amount equal to 100% of the net operating losses incurred in taxable years beginning on and after January 1, 2004.

This bill, for net operating losses incurred in taxable years beginning on or after January 1, 2003, would allow a net operating loss

carryforward deduction in an amount equal to 100% of the net operating loss incurred.

Existing law requires the transferee of real property to withhold $3\frac{1}{3}\%$ of the purchase price of the property if the property was either acquired from an individual or from a corporation, if after the transfer that corporation has no permanent place of business in this state.

This bill would require that the transferee of real property withhold $3\frac{1}{3}\%$ of the purchase price of the property if the property was either acquired from a person, who is not a resident or who after the transfer of the real property will no longer be a resident of this state, or from a corporation, if after the transfer that corporation has no permanent place of business in this state.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The State of California is currently experiencing a sustained
4 economic downturn. According to the Legislative Analyst's
5 office, California has lost over 230,000 manufacturing jobs just in
6 the last two years.

7 (b) State spending has increased by over 30 percent in the last
8 four years, and the state's Legislative Analyst projects that the state
9 will experience operating deficits of \$12 billion to \$16 billion
10 every year unless significant cuts in state spending are
11 implemented.

12 (c) The state budget crisis of 2001 and 2002 will worsen if
13 employers continue leaving the state and prospective employers
14 are discouraged from siting operations here because of an
15 unfavorable business climate.

16 (d) California's taxpayers, both individuals and businesses,
17 shoulder a disproportionate share of the fiscal burden. In 2002,
18 when state governments faced a nationwide combined budget gap
19 of more than \$40 billion, California's \$23 billion budget deficit
20 represented one-half of the combined deficits, with no relief in
21 sight.



(e) According to the Milken Institute, in a study conducted in early 2002, California has the third highest overall cost of doing business in the United States, 32 percent above the national average, and California's cost of doing business is the highest in the west.

(f) California's tax burden has increased nearly 4 percent, while nearby states have lowered their tax burden on average 7.8 percent in the last decade.

(g) The increased costs of doing business in California are, in large part, the result of the onerous legislation enacted in recent years, and will be exacerbated by the legislation that will take effect on January 1, 2003.

SEC. 2. Section 17276 of the Revenue and Taxation Code is amended to read:

17276. Except as provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, 17276.6, and 17276.7, the deduction provided by Section 172 of the Internal Revenue Code, relating to a net operating loss deduction, ~~shall be~~ is modified as follows:

(a) (1) Net operating losses attributable to taxable years beginning before January 1, 1987, ~~shall not be~~ are allowed.

(2) A net operating loss ~~shall~~ may not be carried forward to any taxable year beginning before January 1, 1987.

(b) (1) Except as provided in paragraphs (2) and (3), the provisions of Section 172(b)(2) of the Internal Revenue Code, relating to the amount of carryovers, ~~shall be~~ are modified so that the applicable percentage of the entire amount of the net operating loss for any taxable year ~~shall be~~ is eligible for carryover to any subsequent taxable year. For purposes of this subdivision, the applicable percentage ~~shall be~~ is:

(A) Fifty percent for any taxable year beginning before January 1, 2000.

(B) Fifty-five percent for any taxable year beginning on or after January 1, 2000, and before January 1, 2002.

(C) Sixty percent for any taxable year beginning on or after January 1, 2002, and before January 1, ~~2004~~ 2003.

(D) One hundred percent for any taxable year beginning on or after January 1, ~~2004~~ 2003.

(2) In the case of a taxpayer who has a net operating loss in any taxable year beginning on or after January 1, 1994, and who operates a new business during that taxable year, each of the

1 following ~~shall apply~~ *applies* to each loss incurred during the first
2 three taxable years of operating the new business:

3 (A) If the net operating loss is equal to or less than the net loss
4 from the new business, 100 percent of the net operating loss shall
5 be carried forward as provided in subdivision (d).

6 (B) If the net operating loss is greater than the net loss from the
7 new business, the net operating loss shall be carried over as
8 follows:

9 (i) With respect to an amount equal to the net loss from the new
10 business, 100 percent of that amount shall be carried forward as
11 provided in subdivision (d).

12 (ii) With respect to the portion of the net operating loss that
13 exceeds the net loss from the new business, the applicable
14 percentage of that amount shall be carried forward as provided in
15 subdivision (d).

16 (C) For purposes of Section 172(b)(2) of the Internal Revenue
17 Code, the amount described in clause (ii) of subparagraph (B) shall
18 be absorbed before the amount described in clause (i) of
19 subparagraph (B).

20 (3) In the case of a taxpayer who has a net operating loss in any
21 taxable year beginning on or after January 1, 1994, and who
22 operates an eligible small business during that taxable year, each
23 of the following ~~shall apply~~ *applies*:

24 (A) If the net operating loss is equal to or less than the net loss
25 from the eligible small business, 100 percent of the net operating
26 loss shall be carried forward to the taxable years specified in
27 subdivision (d).

28 (B) If the net operating loss is greater than the net loss from the
29 eligible small business, the net operating loss shall be carried over
30 as follows:

31 (i) With respect to an amount equal to the net loss from the
32 eligible small business, 100 percent of that amount shall be carried
33 forward as provided in subdivision (d).

34 (ii) With respect to that portion of the net operating loss that
35 exceeds the net loss from the eligible small business, the applicable
36 percentage of that amount shall be carried forward as provided in
37 subdivision (d).

38 (C) For purposes of Section 172(b)(2) of the Internal Revenue
39 Code, the amount described in clause (ii) of subparagraph (B) shall

1 be absorbed before the amount described in clause (i) of
2 subparagraph (B).

3 (4) In the case of a taxpayer who has a net operating loss in a
4 taxable year beginning on or after January 1, 1994, and who
5 operates a business that qualifies as both a new business and an
6 eligible small business under this section, that business shall be
7 treated as a new business for the first three taxable years of the new
8 business.

9 (5) In the case of a taxpayer who has a net operating loss in a
10 taxable year beginning on or after January 1, 1994, and who
11 operates more than one business, and more than one of those
12 businesses qualifies as either a new business or an eligible small
13 business under this section, paragraph (2) ~~shall be applied~~ *applies*
14 first, except that if there is any remaining portion of the net
15 operating loss after application of clause (i) of subparagraph (B)
16 of that paragraph, paragraph (3) ~~shall be applied~~ *apply* to the
17 remaining portion of the net operating loss as though that
18 remaining portion of the net operating loss constituted the entire
19 net operating loss.

20 (6) For purposes of this section, the term “net loss” means the
21 amount of net loss after application of Sections 465 and 469 of the
22 Internal Revenue Code.

23 (c) Net operating loss carrybacks ~~shall not be~~ *are not* allowed.

24 (d) (1) (A) For a net operating loss for any taxable year
25 beginning on or after January 1, 1987, and before January 1, 2000,
26 Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to
27 years to which net operating losses may be carried, is modified to
28 substitute “five taxable years” in lieu of “20 taxable years”
29 except as otherwise provided in paragraphs (2) and (3).

30 (B) For a net operating loss for any taxable year beginning on
31 or after January 1, 2000, Section 172(b)(1)(A)(ii) of the Internal
32 Revenue Code, relating to years to which net operating losses may
33 be carried, is modified to substitute “10 taxable years” in lieu of
34 “20 taxable years.”

35 (2) For any taxable year beginning before January 1, 2000, in
36 the case of a “new business,” the “five taxable years” in
37 paragraph (1) shall be modified to read as follows:

38 (A) “Eight taxable years” for a net operating loss attributable
39 to the first taxable year of that new business.

1 (B) “Seven taxable years” for a net operating loss attributable
2 to the second taxable year of that new business.

3 (C) “Six taxable years” for a net operating loss attributable to
4 the third taxable year of that new business.

5 (3) For any carryover of a net operating loss for which a
6 deduction is denied by Section 17276.3, the carryover period
7 specified in this subdivision ~~shall be~~ is extended as follows:

8 (A) By one year for a net operating loss attributable to taxable
9 years beginning in 1991.

10 (B) By two years for a net operating loss attributable to taxable
11 years beginning prior to January 1, 1991.

12 (4) The net operating loss attributable to taxable years
13 beginning on or after January 1, 1987, and before January 1, 1994,
14 shall be a net operating loss carryover to each of the 10 taxable
15 years following the year of the loss if it is incurred by a taxpayer
16 that is under the jurisdiction of the court in a Title 11 or similar case
17 at any time during the income year. The loss carryover provided
18 in the preceding sentence ~~shall~~ does not apply to any loss incurred
19 after the date the taxpayer is no longer under the jurisdiction of the
20 court in a Title 11 or similar case.

21 (e) For purposes of this section:

22 (1) “Eligible small business” means any trade or business that
23 has gross receipts, less returns and allowances, of less than one
24 million dollars (\$1,000,000) during the taxable year.

25 (2) Except as provided in subdivision (f), “new business”
26 means any trade or business activity that is first commenced in this
27 state on or after January 1, 1994.

28 (3) “Title 11 or similar case” ~~shall have~~ has the same meaning
29 as in Section 368(a)(3) of the Internal Revenue Code.

30 (4) In the case of any trade or business activity conducted by a
31 partnership or “S corporation,” paragraphs (1) and (2) ~~shall be~~
32 ~~applied~~ apply to the partnership or “S corporation.”

33 (f) For purposes of this section, in determining whether a trade
34 or business activity qualifies as a new business under paragraph (2)
35 of subdivision (e), the following rules ~~shall~~ apply:

36 (1) In any case where a taxpayer purchases or otherwise
37 acquires all or any portion of the assets of an existing trade or
38 business (irrespective of the form of entity) that is doing business
39 in this state (within the meaning of Section 23101), the trade or
40 business thereafter conducted by the taxpayer (or any related

person) ~~shall~~ may not be treated as a new business if the aggregate fair market value of the acquired assets (including real, personal, tangible, and intangible property) used by the taxpayer (or any related person) in the conduct of its trade or business exceeds 20 percent of the aggregate fair market value of the total assets of the trade or business being conducted by the taxpayer (or any related person). For purposes of this paragraph only, the following rules ~~shall~~ apply:

(A) The determination of the relative fair market values of the acquired assets and the total assets shall be made as of the last day of the first taxable year in which the taxpayer (or any related person) first uses any of the acquired trade or business assets in its business activity.

(B) Any acquired assets that constituted property described in Section 1221(1) of the Internal Revenue Code in the hands of the transferor ~~shall~~ may not be treated as assets acquired from an existing trade or business, unless those assets also constitute property described in Section 1221(1) of the Internal Revenue Code in the hands of the acquiring taxpayer (or related person).

(2) In any case where a taxpayer (or any related person) is engaged in one or more trade or business activities in this state, or has been engaged in one or more trade or business activities in this state within the preceding 36 months (“prior trade or business activity”), and thereafter commences an additional trade or business activity in this state, the additional trade or business activity shall only be treated as a new business if the additional trade or business activity is classified under a different division of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, than are any of the taxpayer’s (or any related person’s) current or prior trade or business activities.

(3) In any case where a taxpayer, including all related persons, is engaged in trade or business activities wholly outside of this state and the taxpayer first commences doing business in this state (within the meaning of Section 23101) after December 31, 1993 (other than by purchase or other acquisition described in paragraph (1)), the trade or business activity shall be treated as a new business under paragraph (2) of subdivision (e).

(4) In any case where the legal form under which a trade or business activity is being conducted is changed, the change in form

1 shall be disregarded and the determination of whether the trade or
2 business activity is a new business shall be made by treating the
3 taxpayer as having purchased or otherwise acquired all or any
4 portion of the assets of an existing trade or business under the rules
5 of paragraph (1) of this subdivision.

6 (5) “Related person” ~~shall mean~~ *means* any person that is
7 related to the taxpayer under either Section 267 or 318 of the
8 Internal Revenue Code.

9 (6) “Acquire” ~~shall include~~ *includes* any gift, inheritance,
10 transfer incident to divorce, or any other transfer, whether or not
11 for consideration.

12 (7) (A) For taxable years beginning on or after January 1,
13 1997, the term “new business” ~~shall include~~ *includes* any
14 taxpayer that is engaged in biopharmaceutical activities or other
15 biotechnology activities that are described in Codes 2833 to 2836,
16 inclusive, of the Standard Industrial Classification (SIC) Manual
17 published by the United States Office of Management and Budget,
18 1987 edition, and as further amended, and that has not received
19 regulatory approval for any product from the United States Food
20 and Drug Administration.

21 (B) For purposes of this paragraph:

22 (i) “Biopharmaceutical activities” means those activities that
23 use organisms or materials derived from organisms, and their
24 cellular, subcellular, or molecular components, in order to provide
25 pharmaceutical products for human or animal therapeutics and
26 diagnostics. Biopharmaceutical activities make use of living
27 organisms to make commercial products, as opposed to
28 pharmaceutical activities that make use of chemical compounds to
29 produce commercial products.

30 (ii) “Other biotechnology activities” means activities
31 consisting of the application of recombinant DNA technology to
32 produce commercial products, as well as activities regarding
33 pharmaceutical delivery systems designed to provide a measure of
34 control over the rate, duration, and site of pharmaceutical delivery.

35 (g) In computing the modifications under Section 172(d)(2) of
36 the Internal Revenue Code, relating to capital gains and losses of
37 taxpayers other than corporations, the exclusion provided by
38 Section 18152.5 ~~shall~~ *may* not be allowed.

39 (h) Notwithstanding any provisions of this section to the
40 contrary, a deduction shall be allowed to a “qualified taxpayer”

1 as provided in Sections 17276.1, 17276.2, 17276.4, 17276.5,
2 17276.6, and 17276.7.

3 (i) The Franchise Tax Board may prescribe appropriate
4 regulations to carry out the purposes of this section, including any
5 regulations necessary to prevent the avoidance of the purposes of
6 this section through splitups, shell corporations, partnerships,
7 tiered ownership structures, or otherwise.

8 (j) The Franchise Tax Board may reclassify any net operating
9 loss carryover determined under either paragraph (2) or (3) of
10 subdivision (b) as a net operating loss carryover under paragraph
11 (1) of subdivision (b) upon a showing that the reclassification is
12 necessary to prevent evasion of the purposes of this section.

13 (k) Except as otherwise provided, the amendments made by
14 Chapter 107 of the Statutes of 2000 shall apply to net operating
15 losses for taxable years beginning on or after January 1, 2000.

16 SEC. 3. Section 17276.3 of the Revenue and Taxation Code
17 is repealed.

18 ~~17276.3. (a) Notwithstanding Sections 17276, 17276.1,~~
19 ~~17276.2, 17276.4, 17276.5, 17276.6, and 17276.7 of this code and~~
20 ~~Section 172 of the Internal Revenue Code, no net operating loss~~
21 ~~deduction shall be allowed for any taxable year beginning on or~~
22 ~~after January 1, 2002, and before January 1, 2004.~~

23 ~~(b) For any carryover of a net operating loss for which a~~
24 ~~deduction is denied by subdivision (a), the carryover period under~~
25 ~~Section 172 of the Internal Revenue Code shall be extended as~~
26 ~~follows:~~

27 ~~(1) By one year, for losses incurred in taxable years beginning~~
28 ~~on or after January 1, 2002, and before January 1, 2003.~~

29 ~~(2) By two years, for losses incurred in taxable years beginning~~
30 ~~before January 1, 2002.~~

31 SEC. 4. Section 18662 of the Revenue and Taxation Code is
32 repealed.

33 ~~18662. (a) The Franchise Tax Board may, by regulation,~~
34 ~~require any person, in whatever capacity acting (including lessees~~
35 ~~or mortgagors of real or personal property, fiduciaries, employers,~~
36 ~~and any officer or department of the state or any political~~
37 ~~subdivision or agency of the state, or any city organized under a~~
38 ~~freeholder's charter, or any political body not a subdivision or~~
39 ~~agency of the state), having the control, receipt, custody, disposal,~~
40 ~~or payment of items of income specified in subdivision (b), to~~

1 ~~withhold an amount, determined by the Franchise Tax Board to~~
2 ~~reasonably represent the amount of tax due when the items of~~
3 ~~income are included with other income of the taxpayer, and to~~
4 ~~transmit the amount withheld to the Franchise Tax Board at the~~
5 ~~time as it may designate.~~

6 ~~(b) The items of income referred to in subdivision (a) are~~
7 ~~interest, dividends, rents, prizes and winnings, premiums,~~
8 ~~annuities, emoluments, compensation for services, including~~
9 ~~bonuses, partnership income or gains, and other fixed or~~
10 ~~determinable annual or periodical gains, profits, and income.~~

11 ~~(c) The Franchise Tax Board may authorize the tax under~~
12 ~~subdivision (a) to be deducted and withheld from the interest upon~~
13 ~~any securities the owners of which are not known to the~~
14 ~~withholding agent.~~

15 ~~(d) Any person failing to withhold from any payments any~~
16 ~~amounts required by subdivision (a) to be withheld is liable for the~~
17 ~~amount withheld or the amount of taxes due from the person to~~
18 ~~whom the payments are made to an extent not in excess of the~~
19 ~~amounts required to be withheld, whichever is greater, unless it is~~
20 ~~shown that the failure to withhold is due to reasonable cause.~~

21 ~~(e) (1) In the case of any disposition of a California real~~
22 ~~property interest by an individual, the transferee (including for this~~
23 ~~purpose any intermediary or accommodator in a deferred~~
24 ~~exchange) shall be required to withhold an amount equal to $3\frac{1}{3}$~~
25 ~~percent of the sales price of the California real property conveyed.~~

26 ~~(2) Notwithstanding any other provision of this subdivision, all~~
27 ~~of the following shall apply:~~

28 ~~(A) No transferee shall be required to withhold any amount~~
29 ~~under this subdivision unless the sales price of the California real~~
30 ~~property conveyed exceeds one hundred thousand dollars~~
31 ~~(\$100,000).~~

32 ~~(B) No transferee (other than an intermediary or an~~
33 ~~accommodator in a deferred exchange) shall be required to~~
34 ~~withhold any amount under this subdivision unless written~~
35 ~~notification of the withholding requirements of this subdivision~~
36 ~~has been provided by the real estate escrow person.~~

37 ~~(C) No transferee shall be required to withhold under this~~
38 ~~subdivision when the transferee is a corporate beneficiary under~~
39 ~~a mortgage or beneficiary under a deed of trust and the California~~

1 real property is acquired in judicial or nonjudicial foreclosure or
2 by a deed in lieu of foreclosure.

3 ~~(D) No transferee shall be required to withhold any amount~~
4 ~~under this subdivision if the transferee, in good faith and based~~
5 ~~upon all the information of which he or she has knowledge, relies~~
6 ~~on a written certificate executed by the transferor, certifying under~~
7 ~~penalty of perjury, that the California real property being~~
8 ~~conveyed is the principal residence of the transferor (within the~~
9 ~~meaning of Section 121 of the Internal Revenue Code).~~

10 ~~(E) (i) No transferee (including for this purpose any~~
11 ~~intermediary or accommodator in a deferred exchange) shall be~~
12 ~~required to withhold any amount under this subdivision if the~~
13 ~~transferee, in good faith and based on all the information of which~~
14 ~~he or she has knowledge, relies on a written certificate executed by~~
15 ~~the transferor, certifying under penalty of perjury, that the~~
16 ~~California real property being conveyed is exchanged, or will be~~
17 ~~exchanged, for property of like kind (within the meaning of~~
18 ~~Section 1031 of the Internal Revenue Code), but only to the extent~~
19 ~~of the amount of the gain not required to be recognized for~~
20 ~~California income tax purposes under Section 1031 of the Internal~~
21 ~~Revenue Code.~~

22 ~~(ii) Clause (i) shall not apply to the extent that any exchange~~
23 ~~does not qualify for nonrecognition treatment for California~~
24 ~~income tax purposes under Section 1031 of the Internal Revenue~~
25 ~~Code, in whole or in part, due to the failure of the transaction to~~
26 ~~comply with the provisions of Section 1031(a)(3) of the Internal~~
27 ~~Revenue Code, relating to requirement that property be identified~~
28 ~~and that exchange be completed not more than 180 days after~~
29 ~~transfer of the exchanged property.~~

30 ~~(iii) In any case where clause (ii) applies, the transferee~~
31 ~~(including for this purpose any intermediary or accommodator in~~
32 ~~a deferred exchange) shall be required to notify the Franchise Tax~~
33 ~~Board in writing within 10 days of the expiration of the statutory~~
34 ~~periods specified in Section 1031(a)(3) of the Internal Revenue~~
35 ~~Code and shall thereafter remit the applicable withholding~~
36 ~~amounts determined under this subdivision in accordance with~~
37 ~~paragraph (4).~~

38 ~~(F) No transferee shall be required to withhold any amount~~
39 ~~under this subdivision if the transferee, in good faith and based on~~
40 ~~all the information of which he or she has knowledge, relies on a~~

~~written certificate executed by the transferor, certifying under penalty of perjury, that the California real property has been compulsorily or involuntarily converted (within the meaning of Section 1033 of the Internal Revenue Code) and that the transferor intends to acquire property similar or related in service or use so as to be eligible for nonrecognition of gain for California income tax purposes under Section 1033 of the Internal Revenue Code.~~

~~(G) No transferee shall be required to withhold any amount under this subdivision if the transferee, in good faith and based on all the information which he or she has knowledge, relies on a written certificate executed by the transferor, certifying under penalty of perjury, that the transaction will result in a loss for California income tax purposes.~~

~~(3) (A) In the case of any transaction otherwise subject to this subdivision that qualifies as an “installment sale” (within the meaning of Section 453(b) of the Internal Revenue Code) for California income tax purposes, the provisions of this subdivision may, upon the irrevocable written election of the transferee, be separately applied to each payment to be made under the terms of the installment sale agreement between the parties.~~

~~(B) For purposes of subparagraph (A), subparagraph (A) of paragraph (2) shall not apply to each individual payment to be received under the terms of the installment sale agreement.~~

~~(C) The election under this paragraph shall be made at the time, and in the form and manner, specified by the Franchise Tax Board in forms and instructions, except that the form shall, at a minimum, include the requirement specified in subparagraph (D) of this paragraph.~~

~~(D) The election under this paragraph shall only be valid if the transferee agrees to withhold and remit from each installment payment the amount specified under this subdivision in the form and manner, and at the time, specified in paragraph (4).~~

~~(4) Amounts withheld and payments made in accordance with this subdivision shall be reported and remitted to the Franchise Tax Board in the form and manner and at the time specified by the Franchise Tax Board.~~

~~(5) For purposes of this subdivision, “California real property interest” means an interest in real property located in California and defined in Section 897(c)(1)(A)(i) of the Internal Revenue Code.~~

1 ~~(6) For purposes of this subdivision, “real estate escrow~~
2 ~~person” means any of the following persons involved in the real~~
3 ~~estate transaction:~~

4 ~~(A) The person (including any attorney, escrow company, or~~
5 ~~title company) responsible for closing the transaction.~~

6 ~~(B) If no other person described in subparagraph (A) is~~
7 ~~responsible for closing the transaction, then any other person who~~
8 ~~receives and disburses the consideration or value for the interest~~
9 ~~or property conveyed.~~

10 ~~(7) (A) Unless the real estate escrow person provides~~
11 ~~“assistance,” it shall be unlawful for any real estate escrow person~~
12 ~~to charge any customer for complying with the requirements of~~
13 ~~this subdivision.~~

14 ~~(B) For purposes of this paragraph, “assistance” includes, but~~
15 ~~is not limited to, helping the parties clarify with the Franchise Tax~~
16 ~~Board the issue of whether withholding is required under this~~
17 ~~subdivision or, upon request of the parties, withholding an amount~~
18 ~~under this subdivision and remitting that amount to the Franchise~~
19 ~~Tax Board.~~

20 ~~(C) For purposes of this paragraph, “assistance” does not~~
21 ~~include providing the written notification of the withholding~~
22 ~~requirements of this subdivision.~~

23 ~~(D) In a case where the real estate escrow person provides~~
24 ~~“assistance” in complying with the withholding requirements of~~
25 ~~this subdivision, it shall be unlawful for the real estate escrow~~
26 ~~person to charge any customer a fee that exceeds forty-five dollars~~
27 ~~(\$45).~~

28 ~~(8) For purposes of this subdivision, “sales price” means the~~
29 ~~sum of all of the following:~~

30 ~~(A) The cash paid, or to be paid, but excluding for this purpose~~
31 ~~any stated or unstated interest or original issue discount (as~~
32 ~~determined under Sections 1271 through 1275, inclusive, of the~~
33 ~~Internal Revenue Code).~~

34 ~~(B) The fair market value of other property transferred, or to be~~
35 ~~transferred.~~

36 ~~(C) The outstanding amount of any liability assumed by the~~
37 ~~transferee or to which the California real property interest is~~
38 ~~subject immediately before and after the transfer.~~

39 ~~(f) (1) In the case of any disposition of a California real~~
40 ~~property interest by a person (but not a partnership as determined~~

1 in accordance with Subchapter K of Chapter 1 of Subtitle A of the
2 Internal Revenue Code, or a corporation, or an individual), when
3 the return required to be filed with the Secretary of the Treasury
4 under Section 6045(e) of the Internal Revenue Code indicates, or
5 the authorization for the disbursement of the transaction's funds
6 instructs, that the funds be disbursed either to a transferor with a
7 last known street address outside the boundaries of this state at the
8 time of the transfer of the title to the California real property or to
9 the financial intermediary of the transferor, the transferee shall be
10 required to withhold an amount equal to $3\frac{1}{3}$ percent of the sales
11 price of the California real property conveyed.

12 (2) In the case of any disposition of a California real property
13 interest by a corporation, the transferee shall be required to
14 withhold an amount equal to $3\frac{1}{3}$ percent of the sales price of the
15 California real property conveyed, if the corporation immediately
16 after the transfer of the title to the California real property has no
17 permanent place of business in California. For purposes of this
18 subdivision, a corporation has no permanent place of business in
19 California if all of the following apply:

20 (A) It is not organized and existing under the laws of
21 California.

22 (B) It does not qualify with the office of the Secretary of State
23 to transact business in California.

24 (C) It does not maintain and staff a permanent office in
25 California.

26 (3) Notwithstanding any other provision of this subdivision, all
27 of the following shall apply:

28 (A) No transferee shall be required to withhold any amount
29 under this subdivision if the sales price of the California real
30 property conveyed does not exceed one hundred thousand dollars
31 (\$100,000).

32 (B) No transferee shall be required to withhold any amount
33 under this subdivision unless written notification of the
34 withholding requirements of this subdivision has been provided by
35 the real estate escrow person.

36 (C) No transferee shall be required to withhold under this
37 subdivision when the transferor is a bank acting as trustee other
38 than a trustee of a deed of trust.

39 (D) No transferee shall be required to withhold under this
40 subdivision when the transferee is a corporate beneficiary under

~~a mortgage or beneficiary under a deed of trust and the California real property is acquired in judicial or nonjudicial foreclosure or by a deed in lieu of foreclosure.~~

~~(E) No transferee shall be required to withhold any amount under this subdivision if the transferee, in good faith and based on all the information of which he or she has knowledge, relies on a written certificate executed by the transferor, certifying under penalty of perjury that the transferor is a corporation with a permanent place of business in California.~~

~~(4) (A) At the request of the transferor, the Franchise Tax Board may authorize that a reduced amount or no amount be withheld under this subdivision if the Franchise Tax Board determines that to substitute a reduced amount or no amount shall not jeopardize the collection of tax imposed by Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001). If the transferor provides documentation sufficient for the Franchise Tax Board to determine the actual gain required to be recognized on the transaction, the Franchise Tax Board may authorize a reduced amount based on the amount of the gain, as determined, which will result in a sum which is substantially equivalent to the amount of tax reasonably estimated to be due under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) from the inclusion of the gain in the gross amount of the transferor.~~

~~(B) Within 45 days after receiving a request that a reduced amount or no amount be withheld, the Franchise Tax Board shall either authorize a reduced amount or no amount, or deny the request.~~

~~(C) In the case where the parties to the transaction are requesting that a reduced amount or no amount be withheld and the response by the Franchise Tax Board to the request has not been received at the time title to the California real property is transferred, the parties may direct the real estate escrow person to hold in trust for 45 days the amount required to be withheld under this subdivision. The parties shall instruct the real estate escrow person that at the end of 45 days the real estate escrow person shall remit the amount withheld to the Franchise Tax Board in accordance with this section, unless the Franchise Tax Board has authorized that a reduced amount or no amount be withheld.~~

~~(5) Amounts withheld and payments made in accordance with this subdivision shall be reported and remitted to the Franchise Tax Board in the form and at the time as the Franchise Tax Board shall determine.~~

~~(6) “California real property interest” means an interest in real property located in California and defined in Section 897(c)(1)(A)(i) of the Internal Revenue Code.~~

~~(7) For purposes of this subdivision, “financial intermediary” means an agent for the purpose of receiving and transferring funds to a principal.~~

~~(8) For purposes of this subdivision, “real estate escrow person” means any of the following persons involved in the real estate transaction:~~

~~(A) The person (including any attorney, escrow company, or title company) responsible for closing the transaction.~~

~~(B) If no other person described in subparagraph (A) is responsible for closing the transaction, then any other person who receives and disburses the consideration or value for the interest or property conveyed.~~

~~(9) (A) Unless the real estate escrow person provides “assistance,” it shall be unlawful for any real estate escrow person to charge any customer for complying with the requirements of this subdivision.~~

~~(B) For purposes of this paragraph, “assistance” includes, but is not limited to, helping the parties clarify with the Franchise Tax Board the issue of whether withholding is required under this subdivision, helping the parties request that the Franchise Tax Board authorize a reduced amount or no amount be withheld under this subdivision, or, upon request of the parties, withholding an amount under this subdivision and remitting the amount to the Franchise Tax Board.~~

~~(C) For purposes of this paragraph, “assistance” does not include providing the written notification of the withholding requirements of this subdivision, or providing the certification that the transferor is a corporation with a permanent place of business in California.~~

~~(D) In a case where the real estate escrow person provides “assistance” in complying with the withholding requirements of this subdivision, it shall be unlawful for the real estate escrow~~

1 ~~person to charge any customer a fee that exceeds forty-five dollars~~
2 ~~(\$45).~~

3 ~~(10) For purposes of this subdivision, “sales price” means the~~
4 ~~sum of all of the following:~~

5 ~~(A) The cash paid, or to be paid. The term “cash paid, or to be~~
6 ~~paid” does not include stated or unstated interest or original issue~~
7 ~~discount (as determined by Sections 1271 to 1275, inclusive, of the~~
8 ~~Internal Revenue Code).~~

9 ~~(B) The fair market value of other property transferred, or to be~~
10 ~~transferred.~~

11 ~~(C) The outstanding amount of any liability assumed by the~~
12 ~~transferee or to which the California real property interest is~~
13 ~~subject immediately before and after the transfer.~~

14 ~~(g) Whenever any person has withheld any amount pursuant to~~
15 ~~this section, the amount so withheld shall be held in trust for the~~
16 ~~State of California. The amount of the fund shall be assessed,~~
17 ~~collected, and paid in the same manner and subject to the same~~
18 ~~provisions and limitations (including penalties) as are applicable~~
19 ~~with respect to the taxes imposed by Part 10 (commencing with~~
20 ~~Section 17001), Part 11 (commencing with Section 23001), or this~~
21 ~~part.~~

22 ~~(h) Withholding shall not be required under this section with~~
23 ~~respect to wages, salaries, fees, or other compensation paid by a~~
24 ~~corporation for services performed in California for that~~
25 ~~corporation to a nonresident corporate director for director~~
26 ~~services, including attendance at a board of directors’ meeting.~~

27 ~~(i) In the case of any payment described in subdivision (h), the~~
28 ~~person making the payment shall do each of the following:~~

29 ~~(1) File a return with the Franchise Tax Board at the time and~~
30 ~~in the form and manner specified by the Franchise Tax Board.~~

31 ~~(2) Provide the payee with a statement at the time and in the~~
32 ~~form and manner specified by the Franchise Tax Board.~~

33 ~~(j) (1) The amendments to this section made by the act adding~~
34 ~~this subdivision shall only apply to dispositions of California real~~
35 ~~property interests that occur on or after January 1, 2003.~~

36 ~~(2) In the case of any payments received on or after January 1,~~
37 ~~2003, pursuant to an installment sale agreement relating to a~~
38 ~~disposition occurring before January 1, 2003, the amendments to~~
39 ~~this section made by the act adding this subdivision shall not apply~~
40 ~~to those payments.~~

1 SEC. 5. Section 18662 is added to the Revenue and Taxation
2 Code, to read:

3 18662. (a) The Franchise Tax Board may, by regulation,
4 require any person, in whatever capacity acting (including lessees
5 or mortgagors of real or personal property, fiduciaries, employers,
6 and any officer or department of the state or any political
7 subdivision or agency of the state, or any city organized under a
8 freeholder's charter, or any political body not a subdivision or
9 agency of the state), having the control, receipt, custody, disposal,
10 or payment of items of income specified in subdivision (b), to
11 withhold an amount, determined by the Franchise Tax Board to
12 reasonably represent the amount of tax due when the items of
13 income are included with other income of the taxpayer, and to
14 transmit the amount withheld to the Franchise Tax Board at the
15 time as it may designate.

16 (b) The items of income referred to in subdivision (a) are
17 interest, dividends, rents, prizes and winnings, premiums,
18 annuities, emoluments, compensation for services, including
19 bonuses, partnership income or gains, and other fixed or
20 determinable annual or periodical gains, profits, and income.

21 (c) The Franchise Tax Board may authorize the tax under
22 subdivision (a) to be deducted and withheld from the interest upon
23 any securities the owners of which are not known to the
24 withholding agent.

25 (d) Any person failing to withhold from any payments any
26 amounts required by subdivision (a) to be withheld is liable for the
27 amount withheld or the amount of taxes due from the person to
28 whom the payments are made to an extent not in excess of the
29 amounts required to be withheld, whichever is greater, unless it is
30 shown that the failure to withhold is due to reasonable cause.

31 (e) (1) In the case of any disposition of a California real
32 property interest by a person (but not a partnership as determined
33 in accordance with Subchapter K of Chapter 1 of Subtitle A of the
34 Internal Revenue Code, or a corporation), when the return required
35 to be filed with the Secretary of the Treasury under Section
36 6045(e) of the Internal Revenue Code indicates, or the
37 authorization for the disbursement of the transaction's funds
38 instructs, that the funds be disbursed either to a transferor with a
39 last known street address outside the boundaries of this state at the
40 time of the transfer of the title to the California real property or to

1 the financial intermediary of the transferor, the transferee shall be
2 required to withhold an amount equal to $3\frac{1}{3}$ percent of the sales
3 price of the California real property conveyed.

4 (2) In the case of any disposition of a California real property
5 interest by a corporation, the transferee shall be required to
6 withhold an amount equal to $3\frac{1}{3}$ percent of the sales price of the
7 California real property conveyed, if the corporation immediately
8 after the transfer of the title to the California real property has no
9 permanent place of business in California. For purposes of this
10 subdivision, a corporation has no permanent place of business in
11 California if all of the following apply:

12 (A) It is not organized and existing under the laws of
13 California.

14 (B) It does not qualify with the office of the Secretary of State
15 to transact business in California.

16 (C) It does not maintain and staff a permanent office in
17 California.

18 (3) Notwithstanding any other provision of this subdivision, all
19 of the following shall apply:

20 (A) No transferee shall be required to withhold any amount
21 under this subdivision if the sales price of the California real
22 property conveyed does not exceed one hundred thousand dollars
23 (\$100,000).

24 (B) No transferee shall be required to withhold any amount
25 under this subdivision unless written notification of the
26 withholding requirements of this subdivision has been provided by
27 the real estate escrow person.

28 (C) No transferee shall be required to withhold under this
29 subdivision when the transferor is a bank acting as trustee other
30 than a trustee of a deed of trust.

31 (D) No transferee shall be required to withhold under this
32 subdivision when the transferee is a corporate beneficiary under
33 a mortgage or beneficiary under a deed of trust and the California
34 real property is acquired in judicial or nonjudicial foreclosure or
35 by a deed in lieu of foreclosure.

36 (E) No transferee shall be required to withhold any amount
37 under this subdivision if the transferee, in good faith and based on
38 all the information of which he or she has knowledge, relies on a
39 written certificate executed by the transferor, certifying under
40 penalty of perjury, any of the following:

1 (i) That the transferor is a resident of California.

2 (ii) That the California real property being conveyed is the
3 principal residence of the transferor, within the meaning of Section
4 121 of the Internal Revenue Code.

5 (iii) The transferor, if a corporation, has a permanent place of
6 business in California.

7 (4) (A) At the request of the transferor, the Franchise Tax
8 Board may authorize that a reduced amount or no amount be
9 withheld under this subdivision if the Franchise Tax Board
10 determines that to substitute a reduced amount or no amount shall
11 not jeopardize the collection of tax imposed by Part 10
12 (commencing with Section 17001) or Part 11 (commencing with
13 Section 23001). If the transferor provides documentation
14 sufficient for the Franchise Tax Board to determine the actual gain
15 required to be recognized on the transaction, the Franchise Tax
16 Board may authorize a reduced amount based on the amount of the
17 gain, as determined, which will result in a sum which is
18 substantially equivalent to the amount of tax reasonably estimated
19 to be due under Part 10 (commencing with Section 17001) or Part
20 11 (commencing with Section 23001) from the inclusion of the
21 gain in the gross amount of the transferor.

22 (B) Within 45 days after receiving a request that a reduced
23 amount or no amount be withheld, the Franchise Tax Board shall
24 either authorize a reduced amount or no amount, or deny the
25 request.

26 (C) In the case where the parties to the transaction are
27 requesting that a reduced amount or no amount be withheld and the
28 response by the Franchise Tax Board to the request has not been
29 received at the time title to the California real property is
30 transferred, the parties may direct the real estate escrow person to
31 hold in trust for 45 days the amount required to be withheld under
32 this subdivision. The parties shall instruct the real estate escrow
33 person that at the end of 45 days the real estate escrow person shall
34 remit the amount withheld to the Franchise Tax Board in
35 accordance with this section, unless the Franchise Tax Board has
36 authorized that a reduced amount or no amount be withheld.

37 (5) Amounts withheld and payments made in accordance with
38 this subdivision shall be reported and remitted to the Franchise Tax
39 Board in the form and at the time as the Franchise Tax Board shall
40 determine.



1 (6) “California real property interest” means an interest in real
2 property located in California and defined in Section
3 897(c)(1)(A)(i) of the Internal Revenue Code.

4 (7) For purposes of this subdivision, “financial intermediary”
5 means an agent for the purpose of receiving and transferring funds
6 to a principal.

7 (8) For purposes of this subdivision, “real estate escrow
8 person” means any of the following persons involved in the real
9 estate transaction:

10 (A) The person (including any attorney, escrow company, or
11 title company) responsible for closing the transaction.

12 (B) If no other person described in subparagraph (A) is
13 responsible for closing the transaction, then any other person who
14 receives and disburses the consideration or value for the interest
15 or property conveyed.

16 (9) (A) Unless the real estate escrow person provides
17 “assistance,” it shall be unlawful for any real estate escrow person
18 to charge any customer for complying with the requirements of
19 this subdivision.

20 (B) For purposes of this paragraph, “assistance” includes, but
21 is not limited to, helping the parties clarify with the Franchise Tax
22 Board the issue of whether withholding is required under this
23 subdivision, helping the parties request that the Franchise Tax
24 Board authorize a reduced amount or no amount be withheld under
25 this subdivision, or, upon request of the parties, withholding an
26 amount under this subdivision and remitting the amount to the
27 Franchise Tax Board.

28 (C) For purposes of this paragraph, “assistance” does not
29 include providing the written notification of the withholding
30 requirements of this subdivision, or providing the certification that
31 either:

32 (i) The transferor is a resident of California or that the
33 California real property being conveyed is the transferor’s
34 principal residence.

35 (ii) The transferor, if a corporation, has a permanent place of
36 business in California.

37 (D) In a case where the real estate escrow person provides
38 “assistance” in complying with the withholding requirements of
39 this subdivision, it shall be unlawful for the real estate escrow

1 person to charge any customer a fee that exceeds forty-five dollars
2 (\$45).

3 (10) For purposes of this subdivision, “sales price” means the
4 sum of all of the following:

5 (A) The cash paid, or to be paid. The term “cash paid, or to be
6 paid” does not include stated or unstated interest or original issue
7 discount (as determined by Sections 1271 to 1275, inclusive, of the
8 Internal Revenue Code).

9 (B) The fair market value of other property transferred, or to be
10 transferred.

11 (C) The outstanding amount of any liability assumed by the
12 transferee or to which the California real property interest is
13 subject immediately before and after the transfer.

14 (f) Whenever any person has withheld any amount pursuant to
15 this section, the amount so withheld shall be held in trust for the
16 State of California. The amount of the fund shall be assessed,
17 collected, and paid in the same manner and subject to the same
18 provisions and limitations (including penalties) as are applicable
19 with respect to the taxes imposed by Part 10 (commencing with
20 Section 17001), Part 11 (commencing with Section 23001), or this
21 part.

22 (g) Withholding shall not be required under this section with
23 respect to wages, salaries, fees, or other compensation paid by a
24 corporation for services performed in California for that
25 corporation to a nonresident corporate director for director
26 services, including attendance at a board of directors’ meeting.

27 (h) In the case of any payment described in subdivision (g), the
28 person making the payment shall do each of the following:

29 (1) File a return with the Franchise Tax Board at the time and
30 in the form and manner specified by the Franchise Tax Board.

31 (2) Provide the payee with a statement at the time and in the
32 form and manner specified by the Franchise Tax Board.

33 SEC. 6. This act is an urgency statute necessary for the
34 immediate preservation of the public peace, health, or safety
35 within the meaning of Article IV of the Constitution and shall go
36 into immediate effect. The facts constituting the necessity are:



1 In order to timely provide a necessary stimulus to the California
2 economy, to the benefit of the public treasury, it is necessary that
3 this act take effect immediately.

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